

85 Brookside
Missoula, MT 59802
February 1, 2016

Legislative Council
P.O. Box 201706
Helena, Montana 59620-1706

Dear Representative Hunter and Members of the Council:

On behalf of all of the Montana Commissioners on Uniform State Laws, I am pleased to enclose the report concerning our 2015 activities. We thank you for the opportunity to be of service of Montana.

If you have any questions about any proposed uniform law, or if you have any suggestions for possible new uniform acts, please contact me or any of Montana's Commissioners.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Edwin Eck". The signature is fluid and cursive, with the first name "E." being prominent.

E. Edwin Eck
Uniform Law Commissioner

Ex-4

REPORT TO GOVERNOR BULLOCK AND MEMBERS OF THE MONTANA LEGISLATURE

I. PREAMBLE

To the Honorable Steve Bullock and members of the Montana Legislature. The Montana Commissioners on Uniform State Laws respectfully submit this annual report.

II. OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. The statutory authority governing Montana's uniform law commission can be found at MCA section 1-12-101 et seq.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are members of the bar. While some commissioners serve as state legislators and other state officials, most are practitioners, judges and law professors. Uniform law commissioners serve for specific terms, and receive no salaries or fees for their work with the Uniform Law Commission.

Commissioners study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The ULC can only propose – no uniform law is effective until a state legislature adopts it.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, it is a genuine coalition of state interests. It has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions, and has done so with significant success.

III. HISTORY

On August 24, 1892, representatives from seven states – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey and Pennsylvania – met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission. By 1912, every state was participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its first commission in 1988.

Very early on the ULC became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members: former Justices Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound and Bogert. Many more distinguished lawyers have served since 1892.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act.

Most significant was the 1940 ULC decision to attack major commercial problems with comprehensive legal solutions – a decision that set in motion the project to produce the Uniform Commercial Code (UCC). Working with the American Law Institute, the UCC took ten years to draft and another 14 years before it was enacted across the country. It remains the signature product of the ULC.

Today the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The Uniform Law Commission arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

IV. DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the Uniform Law Commission, the terms of uniform law commissioners and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission encourages the appointing authorities to consider among other factors, diversity of membership in their uniform law commissions, including race, ethnicity and gender in making appointments. The Uniform Law Commission does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

V. PROCEDURES

The ULC is convened as a body once a year. It meets for a period of six or seven days, usually in July or August. In the interim period between these annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the Uniform Law Commission is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, and is composed of the officers, certain ex-officio members, and members appointed by the ULC President. Certain activities are conducted by the standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee superintends the relationships of the ULC to the state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the ULC.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to all ULC drafting committees and many ULC study committees. Liaison is also maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the Conference of Chief Justices, and the National Center for State Courts on an on-going basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

VI. ACTIVITIES OF THE MONTANA COMMISSIONERS

A. The Montana Commissioners are: Hon. Gregory G. Pinski, Professor Jon Byington, Professor Karen E. Powell, Todd M. Everts, and E. Edwin Eck. One November 16, 2015, the Legislative Council appointed the newest Montana Commissioner, Judge Greg Pinski. Judge Pinski has been a District Court Judge of Montana's Eight Judicial District since January 2013 and served in private practice for fourteen years prior to being elected to the Bench.

B. Todd M. Everts is a member of the Legislative Attorneys Committee.

C. The Montana Commissioners met on January 14, 2016.

D. Montana Commissioners attending the 2015 ULC Annual Meeting held in Williamsburg, Virginia were: Karen Powell, Jon Byington, and Todd Everts.

VII. A SUMMARY OF NEW ACTS

Revised Uniform Athlete Agents Act

The Revised Uniform Athlete Agents Act (2015) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The Revised Act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

Uniform Commercial Real Estate Receivership Act

Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This Uniform Commercial Real Estate Receivership Act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership.

Revised Uniform Fiduciary Access to Digital Assets Act

A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person’s best interest. Common types of fiduciaries include executors of a decedent’s estate, trustees, conservators, and agents under a power of attorney. The Revised Uniform Fiduciary Access to Digital Assets Act extends the traditional power of a fiduciary to manage tangible property to include management of a person’s digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary’s access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

Uniform Home Foreclosure Procedures Act

The recent wave of residential foreclosure actions revealed flaws in the foreclosure system, particularly in states where court systems were overwhelmed. The Uniform Home Foreclosure Procedures Act provides a balanced set of rules and procedures to standardize and streamline the foreclosure process. The act protects homeowners by requiring adequate notice and documentation before a foreclosure action can proceed. The act protects lenders by precluding contrary municipal ordinances and expediting foreclosure of abandoned properties. Finally, the act includes rules for pre-foreclosure resolutions and negotiated transfers to encourage non-judicial solutions.

Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against

victims of domestic violence. Canada has granted recognition to protection orders of the United States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act. By this act, enacting states accord similar recognition to protection orders from Canada.

Revised Uniform Residential Landlord and Tenant Act

The Revised Uniform Residential Landlord and Tenant Act is an updated version of the Uniform Residential Landlord and Tenant Act, which was first promulgated in 1972 and last amended in 1974. The purpose of the original Act was to eliminate all elements of outmoded common law from the landlord-tenant relationship and base all phases of the rental agreement on contract law. The Revised Act includes new articles covering the disposition of tenant property, lease termination in case of domestic violence or sexual assault, and security deposits. The Revised Act also includes an appendix for states that only want to enact the updated provisions.

Uniform Trust Decanting Act

“Decanting” is the term used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a useful strategy for changing the outdated terms of an otherwise irrevocable trust, but can also be abused to defeat the settlor’s intent. The Uniform Trust Decanting Act allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor’s original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

VIII. RECOMMENDATIONS FOR ENACTMENT

The Montana Commissioners recommend that these Uniform and Model Acts be considered in the legislative session beginning January 2017:

1. Revised Uniform Athlete Agents Act;
2. Revised Uniform Fiduciary Access to Digital Assets Act;
3. Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act; and
4. Uniform Trust Decanting Act.

The Montana Commissioners are studying the possible need for Montana legislative consideration of various business entity acts and the Revised Uniform Residential Landlord and Tenant Act.

IX. ENACTMENT RECORD TO DATE

One hundred fifty-one uniform acts have been adopted in Montana. Only one state has enacted more uniform acts than Montana. During the 2015 session, the following were adopted:

1. Revised Uniform Law on Notarial Acts;
2. Uniform Collaborative Law Act;
3. Uniform Interstate Family Support Act Amendments;

4. Uniform Powers of Appointment Act; and
5. Uniform Prevention of and Remedies for Human Trafficking Act

Dated this first day of February, 2016.



E. Edwin Eck
Uniform Law Commissioner
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